

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 1126*

House Bill No. 1031

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

Short Title. -- This part may be cited as the "Check Loan Act".

Section 100. Definitions.

As used in this act, unless the context required otherwise:

(1) "Check" means any check, draft, money order, personal money order, traveler's check, or other instrument for the transmission or payment of money.

(2) "Commissioner" means the commissioner of the department of financial Institutions, or his duly designated representative.

(3) "Consideration" includes any premium charged for the sale of goods or services in excess of the cash price of the goods or services.

(4) "Department" means the department of financial institutions.

(5) "Licensee" means a person duly licensed by the commissioner pursuant to this act.

(6) "Person" means any individual, partnership association, joint stock association, trust, corporation, or other entity, but shall not include the United States government or the government of the state of Tennessee.

(7) "Personal Check" means any check issued by an individual.

Section 101. Requirement of license.

Except as provided in § 102, no person shall engage in the business of lending money in exchange for a check for a fee or other consideration without having first obtained a license. A separate license shall be required for each location from which such business is conducted. Any person engaged in the business of lending money in exchange for a check on the effective date

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 1126*

House Bill No. 1031

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

of this act may continue to engage in the business without a license until the commissioner shall have acted upon his application for a license if the application is filed within sixty (60) days after the effective date of this act.

Section 102. Qualifications for license.

To qualify for a license, an applicant shall satisfy the following requirements:

(1) The applicant shall have minimum net worth determined in accordance with generally accepted accounting principles of at least twenty five thousand dollars (\$25,000) for each location.

(2) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification has been met, and for the purpose of investigating compliance with this act, the commissioner may review and approve:

(a) The business records and the capital adequacy of the applicant;

(b) The competence, experience, integrity, and financial ability of any person who is a director, officer, or five percent (5%) or more shareholder of the applicant or owns or controls the applicant; and

(c) Any record, on the part of the applicant or any person referred to in subsection (2)(b), of any criminal activity, any fraud or other act of personal dishonesty, any act, omission, or practice which constitutes a breach of a fiduciary duty or any suspension, removal or administrative action by any agency or department of the United States or any state, from participation in the conduct of any business.

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1126*

House Bill No. 1031

Section 103. Manner of application for license -- form.

Each application for a license shall be in writing and under oath to the department, in a form prescribed by the commissioner, and shall include the following

(1) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, managing employee, and director thereof;

(2) The location in Tennessee at which the registered office of the applicant shall be located; and

(3) Other data and information the department may require with respect to the applicant, its directors, trustees, officers, members, managing employees or agents.

Section 104. Materials to accompany application -- investigation fee.

Each application for a license shall be accompanied by:

(1) An investigation fee of five hundred dollars (\$500) which shall not be subject to refund but which, if the license is granted, shall constitute all or part of the license fee for the first license year or part thereof; and

(2) Audited financial statements for the immediately preceding fiscal year end prepared in accordance with generally accepted accounting principles by a CPA or public accounting firm as prescribed by the commissioner

Section 105. Investigation by department -- issuance of license -- posting of license -- license period

(1) Upon the filing of an application in a form prescribed by the commissioner, accompanied by the fee and documents required in § 104, the department shall investigate to

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 1126*

House Bill No. 1031

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

ascertain whether the qualifications prescribed by § 102 have been satisfied. In addition to the fee provided in § 104 of this act, the department may charge and collect an investigation fee of two hundred dollars (\$200) per day per investigator for any investigation of the applicant upon the initial application, which investigation fee in the aggregate shall not exceed one thousand two hundred dollars (\$1,200) per license holder. If the commissioner finds that the qualifications have been satisfied, and he approves the documents, he shall issue to the applicant a license to engage in the business of lending money in exchange for a check in Tennessee.

(2) Upon issuance of a license to engage in the business of lending money in exchange for a check for a fee, the licensee shall pay to the department a license fee of five hundred dollars (\$500) which shall not be subject to refund.

(3) The license shall be kept conspicuously posted in the place of business of the licensee.

(4) A license issued pursuant to thin section shall remain in force and effective through the remainder of the fiscal year ending September 30 following its date of issuance unless earlier surrendered, suspended, or revoked pursuant to this act.

Section 106. Transfer or assignment prohibited -- notice of changes

(1) No license issued under this act shall be transferable or assignable. If the holder of any license is an entity other than a natural person, any transfer of an interest in the license holder in excess of twenty-five percent (25%) of the ownership of the license holder shall be deemed an attempted transfer of the license and shall terminate the license immediately upon such transfer. Upon termination of a license because of a transfer of more than twenty-five percent (25%) ownership interest in the license holder, the license holder may apply for a new

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1126*

House Bill No. 1031

license, which license may be granted or denied as upon any other application for a license under this act. Each license holder shall, within thirty (30) days after any change occurs, provide written notice to the department of any change of the license holder's name and any change of the address at which the licensed business is conducted.

Section 107. Renewal of license

Each license may be renewed for the ensuing twelve (12) month period upon application by the license holder showing continued compliance with the requirements of Section 102 and the payment to the department annually on or before September 1 of each year a license fee of five hundred dollars (\$500) to renew the license.

Section 108. Place of Business.

Each licensee who lends money in exchange for a check shall only engage in such business as authorized by this act in a location which is exclusively for that purpose. :A: licensee shall not operate the business of lending money in exchange for a check at the same location as any industrial bank, industrial investment company, industrial loan and thrift company, mortgage loan servicer, mortgage loan broker, or pawn broker.

Section 109 Authority to promulgate administrative regulations -- compliance examination and fee.

(1) The department may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this act. A copy of any rule or regulation adopted by the department shall be mailed to each license holder at least thirty (30) days prior to the date it shall take effect.

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 1126*

House Bill No. 1031

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

(2) To assure compliance with the provisions of this act, the department may examine the business, books, and records of any licensee. The department may charge and collect an examination fee of two hundred dollars (\$200) per day per examiner for any compliance examination conducted by the department, which fee in the aggregate shall not exceed one thousand two hundred dollars (\$1,200) per license holder per year.

(3) The department, for the purpose of discovering violations of this act and for the purpose of determining whether persons are subject to the provisions of this act, is hereby authorized to examine persons licensed under this act and persons reasonably suspected by the department of conducting business which requires a license under this act, including all books, records and papers employed by such persons in the transaction of their business, and to summon witnesses and examine them under oath concerning matters relating to the business of such persons or such other matters as may be relevant to the discovery of violations of this act, including without limitation the conduct of business without a license as required under this act.

Section 110. Procedures to be followed by licensees.

(1) Each licensee shall keep and use in its business any books, accounts, and records the department may require to carry into effective the provisions of this act and the administrative regulations issued hereunder Every licensee shall preserve the books, accounts, and records for at least two (2) years.

(2) If the licensee agreed to lend money in exchange for any personal check, the licensee may charge a fee not to exceed twenty percent (20%) of the amount of the check for

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 1126*

House Bill No. 1031

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

lending money in exchange for the personal check and deferring deposit of the personal check until the loan due date.

(3) Before a licensee shall deposit with any bank or other depository institution a check accepted by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

(4) Any licensee who charges a fee for lending money in exchange for a personal check shall defer deposit of the personal check for a minimum of seven (7) business days after the date the check is tendered to the licensee unless the maker of the check specifies otherwise. A licensee shall not defer deposit of any personal check for more than thirty (30) calendar days after the date the check is tendered to the licensee. And agreement to defer deposit of a check must be in writing and signed by the maker of the check.

(5) Within five (5) business days after being advised by the payer financial institution that a check or draft has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or represents the proceeds of illegal activity, the licensee shall notify the state district attorney for the district in which the check was received. If a check or draft is returned to the licensee by the payer financial institution for any of these reasons, the licensee shall not release the check, draft, or money order without the consent of the district attorney or other investigating law enforcement authority.

(6) Licensees shall comply with all provisions of state and federal law regarding cash transactions and cash transaction reporting.

(7) Licensees shall issue a receipt to each person for whom a licensee defers deposit of a check. The receipt shall include, among other matters the licensee may desire to include, the

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 1126*

House Bill No. 1031

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

amount of the check, the total fee charged, the date on which the check will be deposited by the licensee and all information required by the federal Truth in Lending Act.

(8) If a check is returned to the licensee from a payer financial institution due to insufficient funds, the licensee shall have the right to use all civil means available and allowed by law to collect the check, including all rights and remedies provided in Title 47, Chapter 29 of the Tennessee Code Annotated; provided, however, that a licensee shall only recover a bad check fee equal to fifteen dollars (\$15.00) and may only collect one (1) bad check fee for each check, no matter how long the check may remain outstanding. in addition to any bad check fee, a licensee may charge a late charge of up to five dollars (\$5.00) for any loan not paid or check not honored when due.

(9) No licensee may alter or delete the date on any check accepted by the licensee. No licensee may accept an undated check or a check dated on a date other than the date on which the licensee accepts the check

(10) No licensee shall engage in unfair or deceptive acts, practices or advertising in the conduct of the licensed business.

(11) Each licensee must pay the full amount of any check cashed in cash or by check issued by the licensee, less only the fees permitted under this act.

(12) Each licensee shall display its license in a conspicuous location in its place of business and shall post a notice in a conspicuous location in its place of business containing a detail of the charges imposed by the licensee.

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1126*

House Bill No. 1031

(13) No licensee or any person related to the licensee may have outstanding more than two (2) checks from any one (1) customer at any one (1) time, with the aggregate face value of all outstanding checks from any one (1) customer not to exceed five hundred dollars (\$500).

(14) Each licensee shall inquire of any person seeking a loan in exchange for a check regarding such person's outstanding loans from other licensees. If the customer represents in writing that the customer has no more than two (2) checks outstanding to any licensee or licensees and that the aggregate face value of all outstanding checks issued by the customer in exchange for a loan does not equal or exceed five hundred dollars (\$500.00), a licensee may make an additional loan in exchange for a check in an amount which, when combined with the customer's other outstanding checks in exchange for loans, does not exceed five hundred dollars (\$500.00) so long as such loan in exchange for a check complies with subsection (13), above. If the customer represents in writing that the customer has three (3) or more checks outstanding to any licensee or licensees or if the aggregate face value of all outstanding checks issued by the customer in exchange for a loan equals or exceeds five hundred dollars (\$500.00), a licensee shall not extend another loan in exchange for a check to that customer until such time as one (1) or more of the prior loans are repaid, the customer represents to the licensee in writing that the customer qualifies for a new loan in exchange for a check and the licensee may make a loan in exchange for a check under subsection (13), above. Each licensee shall be entitled to rely on a written representation of a customer regarding the existence of any outstanding checks in exchange for a loan given by any licensee other than the licensee receiving the representation.

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1126*

House Bill No. 1031

(15) No loan in exchange for a check shall be repaid, refinanced or otherwise consolidated by proceeds of another loan in exchange for a check or similar arrangement made by the same lender or any person related to such lender by common ownership or control, or in whom such lender has any financial interest; provided, however, any licensee may allow a customer to renew or refinance a loan in exchange for a check for up to ten (10) times for terms of two (2) weeks each so long as the principal amount of such loan is repaid in equal installments over the seventh (7th) through tenth (10th) renewal or refinance of such loan and so long as such loan is paid in full on or before the end of the tenth (10th) renewal term.

Section 111. Denial of license

(1) If the department determines that an applicant is not qualified to receive a license, the department shall notify the applicant in writing that the application has been denied stating the basis for denial.

(2) If the department denies an application, or if the department fails to act on an application within ninety (90) days after its filing, the applicant may make written demand to the department for a hearing before the commissioner of the department on the question of whether the license should be granted.

(3) Any hearing on the denial of a license shall be conducted pursuant to the Uniform Administrative Procedures Act. In any such hearing, the burden of proving that the applicant is entitled to a license shall be on the applicant. Decisions of the commissioner following any hearing on the denial of a license shall be subject to review under the Uniform Administrative Procedures Act.

Section 112 Hearing for suspension or revocation of license.

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 1126*

House Bill No. 1031

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

(1) The department may, after notice and hearing, suspend or revoke any license if the department finds that the licensee has knowingly or while without exercising due care: (a) failed to pay the annual license fee imposed by this act, or an examination fee imposed by the department under the authority of this act; (b) has committed any fraud, engaged in any dishonest activities, or made any misrepresentation; (c) has violated any provisions of this act or any administrative regulation issued pursuant thereto or has violated any other law in the course of its or his dealings as a licensee; (d) has made a false statement in the application for the license or failed to give a true reply to a question in the application; or (e) has demonstrated his or its incompetency or untrustworthiness to act as a licensee. If the reason for revocation or suspension of a licensee's license at any one (1) location is of general application to all locations operated by a licensee, the commissioner may revoke or suspend all licenses issued to a licensee.

(2) A hearing shall be held on written notice given at least twenty (20) days prior to the date of the hearing. The written notice shall set forth the time and place of the hearing and a concise statement of the facts alleged to sustain a suspension or revocation. The hearing shall be full, fair and public. Such suspension or revocation and its effective date shall be set forth in a written order accompanied by conclusions of law, findings of fact and the reasons therefor, and a copy shall forthwith be delivered to the licensee.

Section 113. Show Cause Orders and Enforcement Thereof

(1) The department is authorized to issue orders citing licensees to appear before the department and show cause why the department should not take such action as indicated in the

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1126*

House Bill No. 1031

show cause order as appears justified by preliminary Investigation made by the department under the powers conferred by this act.

(2) Any show cause order shall fully and specifically state the grounds and basis thereof, and the licensee named therein shall be given an opportunity to apply fully thereto

(3) On finding by the department that any person is violating any of the provisions of this act, the department may order such person to cease and desist from such violation and may require the refund of any fees collected by such person in violation of this act.

(4) In the event such person fails to obey any such cease and desist order, the department may seek the enforcement thereof by injunction or by proceedings in the nature of quo warranto, or by other appropriate remedy, including the institution and proceedings to revoke or suspend a license.

(5) Show cause proceedings shall otherwise follow the provisions of the Uniform Administrative Procedures Act with respect to contested cases.

(6) If the department finds, after a hearing, that a person has knowingly and willfully violated this act, the department may assess a civil penalty of not more than five hundred dollars (\$500) against such person for each transaction in violation of this act or each day that a violation has occurred and continues.

Section 114. Consent orders -- Emergency orders.

(a) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this act A consent order must be signed by the person to whom it is issued or a duly authorized representative, and must indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 1126*

House Bill No. 1031

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

provision of this act, or any rule, regulation or order promulgated or issued hereunder has been violated, nor need it constitute a finding by the commissioner that such person has violated any provision of this act or any rule, regulation or order promulgated or issued hereunder.

(b) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

(c) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this part without providing the opportunity for a prior hearing but shall promptly afford a subsequent hearing upon an application to rescind the action taken which is filed with the commissioner within twenty (20) days of the receipt of the notice of the commissioner's emergency action

Section 114. Penalty.

Any person who directly or through another violates or attempts to violate any provision of this act shall be guilty of a Class C misdemeanor. Each transaction in violation of this act and each day that a violation continues shall be a separate offense.

Section 115. Transactions not controlled by other statutes. No transaction authorized or covered by this act shall be subject to or controlled by any statute governing the imposition of interest or loan charges, including without limitation Tennessee Code Annotated, Section 47-14-104.

Section 116. Effective Date. This act shall be effective upon becoming a law for purposes of any rulemaking requirements under this acts and shall be effective July 1, 1996, for all other provisions.

**Senate Commerce
Committee Amendment #1**

AMENDMENT NO._____

Signature of Sponsor

AMEND Senate Bill No. 1126*

House Bill No. 1031

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____
